IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 146 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and Sd/-

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

M/S.THE AGRO ALLOYS MFG CO.

Appearance:

MR MIHIR JOSHI FOR MR RP BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 15/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the Revenue the following question of law has been referred to this Court by the Income Tax Appellate Tribunal, Ahmedabad, Bench "B" under the provisions of section 256(2) of the Income Tax Act,1961.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that for the purpose of

calculating relief u/s. 80HH of the Income-tax,1961, the gross profit has to be determined after including interest paid by the assessee to its partners and disallowable u/s.40(b) of the I.T.Act,1961?".

Mr.Mihir Joshi, learned Advocate has appeared for the Revenue whereas nobody has appeared for the respondent assessee.

2. It has been very fairly submitted by Mr.Mihir Joshi, learned Advocate appearing for the Revenue that a similar question of law had been referred to this Court in ITR No. 138 of 1985. This Court has opined in the said Reference that for the purpose of calculating the relief u/s. 80HH of the Act, the gross profit of the assessee has to be determined after including interest paid to the partners of the assessee which is disallowable u/s.40(b) of the Act. We are in respectful agreement with the view expressed by this Court in the said Reference.

3. In the circumstances, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the Revenue. Reference thus stands disposed of with no order as to costs.

Sd/- Sd/-
(A.R.Dave,J) (D.A.Mehta,J)